**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 15430 of 2003**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**
**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RATHOD RAMESHBHAI NANABHAI - Petitioner(s)**
**Versus**
**COMMANDANT & 1 - Respondent(s)**

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**Appearance :**
MR JV JAPEE for Petitioner(s) : 1,
MS VASAVDATTA BHATT for Respondent(s) : 1 – 2

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**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE MD SHAH**

**Date : 26/06/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

Heard learned counsel for the parties Mr.Japee for the petitioner and Ms.Bhatt for the respondents.

The petitioner has challenged in this petition the impugned order dated 21.1.2002 (Annexure-B) passed by the respondent No.2 whereby the petitioner was sentenced to undergo rigorous imprisonment for four months in civil prison and simultaneously dismissed from service on plea of his guilty for the offences for which he was charged. This is an appealable order under Section 117 of the B.S.F. Act, 1968 r/w. Sec.167 of B.S.F.Rules.

When there is a statutory remedy of appeal against the impugned order at Annexure-B, then this court would not like to exercise its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India. Hence, only on this ground this petition was required to be dismissed.

However, Mr.Japee for the petitioner submitted that before approaching this court by way of this writ petition, he has already filed an appeal with respondent No.2 in July, 2002. But, the appeal was likely to take long time in hearing and final disposal, therefore, after filing the appeal in July, 2002, within a period of 5 months i.e. in December, 2002, he had approached this court by way of the writ petition. He, therefore, submitted that the appellate authority be directed to dispose of his

appeal.

It is true that the petitioner has stated in para 5 of the petition that he had preferred an appeal against the impugned order at Annexure-B before the respondent No.2. It is also true that in the same para he had stated that such appeal was not likely to be heard in near future and its disposal will take a very long time. However, no details have been given about the date of filing the appeal against the impugned order at Annexure-B, before whom he has filed the appeal etc ? There is nothing on record to show that the petitioner has, in fact, preferred such appeal. In fact, on the notice issued by this court on this petition, reply affidavit is filed by Shri G.S.Sandhu, DIG BSF for the respondent and in para 5 of his reply dated 7.11.2004 he has clearly stated that the petitioner had approached this court without exhausting remedy of appeal and he should have filed appeal under Section 117 of the B.S.F. Act, 1968 r/w. Section 167 of the B.S.F. Rules and it is only thereafter if the appeal was dismissed, then only he could have approached this court by way of petition under Article 226 of the Constitution of India. The averments made by the responsible officer like DIG remained uncontroverted inasmuch as no rejoinder affidavit is filed.

Under the circumstances, this petition is required to be rejected.

However, before parting, we may state that if the appeal was filed by the petitioner and duly received by the respondent No.2 and if the same is yet not decided, then on an application filed by the petitioner before respondent No.2 for early disposal of his appeal, the respondent No.2 may try to decide his appeal in accordance with law.

With these observations, this writ petition is dismissed. Rule is discharged with no order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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